

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 17Aug2001

Case No. 2000-BLA-79

In the Matter of
ANNA MAE MCVEY, WIDOW
OF RICHARD MCVEY,
Claimant,

v.

LJ COAL COMPANY, INC.,
Employer,
and
TRAVELERS INSURANCE CO.,
Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Respondent.

APPEARANCES:¹

S. Parker Boggs, Esq.
Harlan, Kentucky
For the Claimant.

John Porter Griffith, Esq.
Porter, Schmitt, Jones & Banks
Paintsville, Kentucky
For the Employer

BEFORE: THOMAS F. PHALEN, JR.
Administrative Law Judge

¹ The Director, Office of Workers' Compensation programs, was not present or represented at the hearing.

DECISION AND ORDER DENYING BENEFITS

This is a decision and order arising out of a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1977, 30 U.S.C. §§ 901-962, (hereinafter referred to as "the Act") and the regulations thereunder, located in Title 20 of the Code of Federal Regulations. Regulation section numbers mentioned in this Decision and Order refer to sections of that Title.

On October 27, 1999, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs, for a hearing. (Dir. Ex. 31)² A formal hearing on this matter was conducted on March 21, 2001, in Harlan, Kentucky, by the undersigned Administrative Law Judge.³ All parties were afforded the opportunity to call, examine and cross examine witnesses, and to present evidence, as provided in the Act and the above referenced regulations.

On February 16, 2001, pursuant to the terms of Paragraph 3 of the Preliminary Injunction entered by the United States District Court for the District of Columbia on February 9, 2001,⁴ the parties were accorded an opportunity to submit briefs on the issue of whether the amended regulatory provisions at 20 C.F.R. §§ 718.104(d), 718.201(a)(2), 718.201(c), 718.204(a), 718.205(c)(5), or 718.205(d) would affect the outcome of this claim. After reviewing the motions, briefs and documents filed by the parties in this case, I determined that the amended regulations would not affect the outcome of this claim, by Order issued March 8, 2001.

ISSUES

The issues in this case are:

² In this Decision, "Dir. Ex." refers to the Director's Exhibits, "Cl. Ex." refers to the Claimant's Exhibits, "Er. Ex." refers to the Employer's Exhibits, and "Tr." refers to the official transcript of this proceeding.

³ A motion by the Claimant for a continuance of the hearing was granted on July 12, 2000.

⁴ The Preliminary Injunction in *National Mining Associates, et al v. Chao*, stays the implementation of many of the amended regulatory provisions. However, with respect to claims pending before the Office of Administrative Law Judges ("OALJ"), the court's order provides that:

All claims for black lung benefits pending before the Department's Office of Administrative Law Judges at the time of this order or which become pending within the period set by the Court for briefing, hearings and decisions on the merits, shall be stayed for the duration of the briefing, hearing and decision schedule set by the Court, except where the adjudicator, after briefing by the parties to the pending claim, determines that the regulations at issue in the instant lawsuit will not affect the outcome of the case. (Emphasis added)

On August 9, 2001, the United States District Court for the District of Columbia issued a Memorandum and Order upholding the validity of the new regulations and lifting its preliminary order.

1. Whether the miner suffered from pneumoconiosis as defined by the Act and regulations;
2. Whether the miner's pneumoconiosis arose out of coal mine employment; and
3. Whether the miner's death was due to pneumoconiosis.

(Dir. Ex. 31; Tr. 9-10)⁵

Based upon a thorough analysis of the entire record in this case, with due consideration accorded to the arguments of the parties, applicable statutory provisions, regulations, and relevant case law, I hereby make the following:

FINDINGS OF FACT

Procedural History:

The miner, Richard McVey, filed three claims for black lung benefits during his lifetime, in 1979, 1991 and 1995. (Dir. Exs. 28-30). All of these claims were denied and have been administratively closed.

Mr. McVey died on November 7, 1996 and Anna Mae McVey, the widow of Richard McVey, filed a claim for survivor's benefits on March 1, 1999. (Dir. Ex. 1; Dir. Ex. 11). This claim was denied by a claims examiner on August 2, 1999, who found that Mrs. McVey had not proven that the miner's death was due to pneumoconiosis. (Dir. Ex. 20) The claim was then referred to the Office of Administrative Law Judges, on October 27, 1999, and a formal hearing was conducted by the undersigned on March 21, 2001, in Harlan, Kentucky. (Dir. Ex. 31)

Background:

The miner, Richard McVey, was born on August 31, 1944, and died on November 7, 1996. (Dir. Exs. 1, 11) He married Anna Mae, the Claimant, on September 6, 1969, and she has not remarried since the miner's death. (Dir. Exs. 1, 10; Tr. 17) Claimant resides in Middlesboro, Kentucky. (Dir. Ex. 1)

The miner's entire coal mine employment took place in Kentucky, with various mining companies. His last coal mine employment, over a period of approximately four years, was with the named employer, LJ Coal Company, and the Employer stipulated that it is the proper responsible operator in this case. (Tr. 18) The record shows that the miner's last coal mining job was principally as foreman, but he performed several other tasks, including roof bolting and driving a scoop. (Dir. Ex. 4) Claimant testified that her husband's jobs were all at the face of the mine and that we would return

⁵ The remaining issues that were previously contested on Form CM-1025 when referred to this Office were withdrawn at the hearing. Further, because this is a survivor's claim for benefits, the issue of whether the miner was totally disabled during his lifetime is not applicable to this matter.

home covered with coal dust. (Tr. 13) She testified that she did his laundry and that coal dust would be “in everything,” including his underclothes. (Tr. 14) His breathing problems, which began several years ago, grew continuously worse during the last year of his life and Mrs. McVey stated that he would have “severe attacks of breathlessness.” (Tr. 14)

Length of Coal Mine Employment:

The Act and the regulations do not provide specific guidelines for determining length of coal mine employment. *Bennett v. Leckie Smokeless Coal Co.*, 4 BRBS 420, 428 (1976). As a result, any reasonable method of determination may be used. *Nicoli v. Director, OWCP*, 6 B.L.R. 1-910 (1984). The burden of proof in establishing the length of coal mine employment, however, is on Claimant. *Rennie v. United States Steel Corp.*, 1 B.L.R. 1-859 (1978).

Claimant alleged 25 years of qualifying coal mine employment and the Employer stipulated to this amount of time at the hearing. (Dir. Ex. 1; Tr. 18). Based on a review of the record, Claimant's allegation, and the stipulation, I find that Claimant has established that her husband worked 25 years in and around the Nation's coal mines.

MEDICAL EVIDENCE

Chest X-rays:

X-ray Date	Exhibit Number	Physician	Qualifications	Reading
04-20-76	Dir. Ex. 16	Dr. Miller	not given	no mention of pneumo
01-07-78	Dir. Ex. 16	Dr. Kim	not given	no mention of pneumo
12-11-78	Dir. Ex. 28	Dr. Quillin	"B" reader, ⁶ BCR ⁷	0/0
08-13-79	Dir. Ex. 16	Dr. Pongdee	BCR	0/0
01-09-80	Dir. Ex. 16	Dr. Pongdee	BCR	0/1
	Dir. Ex. 28	Dr. Cole	"B" reader, BCR	unreadable
09-29-80	Dir. Ex. 16	Dr. Wattanawanakul	not given	0/1
10-02-80	Dir. Ex. 28	Dr. Cole	"B" reader, BCR	negative
10-08-81	Dir. Ex. 28	Dr. Quillin	"B" reader, BCR	0/0
10-08-81	Dir. Ex. 28	Dr. Felson	"B" reader, BCR	0/0

⁶ A "B" reader is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successful completion of an examination conducted by or on behalf of the Department of Health and Human Services. This is a matter of public record at HHS National Institute for Occupational Safety and Health reviewing facility at Morgantown, West Virginia. (42 C.F.R. § 37.51) Consequently, greater weight is given to a diagnosis by a "B" Reader. See *Blackburn v. Director, OWCP*, 2 B.L.R. 1-153 (1979).

⁷ Board-certified radiologist.

X-ray Date	Exhibit Number	Physician	Qualifications	Reading
05-18-90	Dir. Ex. 16	Dr. Wayland	not given	no mention of pneumo
11-27-90	Dir. Ex. 16	Dr. Paulanionio	not given	no mention of pneumo
05-09-91	Dir. Ex. 29	Dr. Baker	"B" reader	1/0
	Dir. Ex. 29	Dr. Gordonson	"B" reader, BCR	unreadable
	Dir. Ex. 29	Dr. Sargent	"B" reader, BCR	no evidence of pneumo
03-03-95	Dir. Ex. 29	Dr. Thorley	"B" reader, BCR	1/0
	Dir. Ex. 30	Dr. Dahhan	"B" reader	0/0
	Dir. Ex. 30	Dr. Sargent	"B" reader, BCR	no evidence of pneumo

Pulmonary Function Tests:

Date	Ex. No.	Age/Height	FEV₁⁸	FVC⁹	MVV¹⁰	Qualifies
01-09-80	Dir. Ex. 28	35/73"	1.94	--	118.12	no
10-09-81	Dir. Ex. 28	37/71"	3.51	3.90	134	no
11-27-90	Dir. Ex. 16	46/73"	4.84	5.06	—	no
05-09-91	Dir. Ex. 29	49/70.5"	2.92	3.40	—	no
03-03-95	Dir. Ex. 30	50/70.5"	3.09	3.54	98.9	no

Arterial Blood Gas Studies:

Test Date	Exhibit Number	pCO₂	pO₂	Qualifies
01-09-80	Dir. Ex. 28	41.6	92.5	no
10-09-81	Dir. Ex. 28	32.6	90.1	no
11-27-90	Dir. Ex. 16	35.5	96	no
05-09-91	Dir. Ex. 29	41.1	99.7	no
03-03-1995	Dir. Ex. 30	32.3	89.9	no
		32.7*	94.5*	no

*after exercise

⁸ Forced expiratory volume in one second.

⁹ Forced vital capacity.

¹⁰ Maximum voluntary ventilation.

Medical Opinions:

The earliest medical notes of record are from December 1978, when Dr. Kent Latham saw the miner in the hospital. (Dir. Ex. 15) Mr. McVey had been admitted with a diagnosis of thyrotoxicosis and Dr. Latham's impression at that time was Graves Disease and excessive thyroid hormone production. Dr. Latham did not mention pneumoconiosis or any respiratory disease and commented that the x-ray revealed an overexpansion of the lungs "possibly suggestive of mild COPD."

Dr. Charles L. Kirkpatrick examined the miner at the Daniel Boone Clinic on January 9, 1980, specifically to evaluate him for black lung disease. (Dir. Ex. 16) Based on this exam, symptoms, medical history and x-ray, Dr. Kirkpatrick found chronic obstructive pulmonary disease and emphysema.

Dr. A.R. Hudson, a board-certified pulmonary specialist, examined Mr. McVey on October 9, 1981 after the patient had complained of chest pain and shortness of breath. (Dir. Ex. 28) Dr. Hudson ordered an x-ray, pulmonary function test, blood gas study and EKG. Based on this exam, the results from the tests, medical history, a coal mining history of 17 years underground and symptoms, Dr. Hudson concluded that the miner did not have a significant pulmonary disability. His opinion was that the patient's shortness of breath was "most likely" due to weakness or a problem in the miner's cardiac function, which condition was not related to his previous exposure to coal dust. At a subsequent deposition concerning this physical examination, Dr. Hudson stated that he found no pneumoconiosis and no disability due to any pulmonary impairment.

In 1990 and 1991, the miner was admitted to the hospital on several occasions for chest pain, irregular heartbeat and other problems. (Dir. Ex. 16) In December of 1990, his discharge diagnoses, completed by Dr. Larry Howard, was chest pain with unknown etiology, syncope with unknown etiology, atrial fibrillation and malnutrition of a moderate degree. That week, Mr. McVey had a left heart catheterization, left ventriculogram and other coronary studies performed. The post-operative diagnosis was coronary artery disease. Coronary angioplasty was performed in January of 1991 and medical notes from this period indicate coronary artery disease and hypothyroidism. There is no report in any of these documents specifically relating to the patient's pulmonary condition.

On May 9, 1991, Dr. Glen Baker examined the miner. (Dir. Ex. 29) After ordering an x-ray, pulmonary function study and blood gas study, as well as recording the patient's medical history, mining history and symptoms, Dr. Baker diagnosed category 1/0 coal workers' pneumoconiosis. In Dr. Baker's opinion, the pulmonary impairment was "mild secondary to coal workers' pneumoconiosis, bronchitis and restrictive defect.

The record contains some progress notes from the Appalachian Regional Care Center summarizing visits from 1994. (Dir. Ex. 15) Conditions mentioned in these notes include cardiac and respiratory arrest and "acute MI."

Dr. A. Dahhan examined Mr. McVey on March 3, 1995. (Dir. Ex. 30) Based on this exam, symptoms, x-ray, pulmonary function study, blood gas study, coal mining history, and medical history, Dr. Dahhan diagnosed atrial fibrillation and coronary artery disease. This doctor found that the patient's impairment was due to his cardiac condition and that the miner was not disabled from working.

In April of 1996, Dr. Mary Ann Woodring examined the miner when he was admitted to the hospital for chest pain. (Dir. Ex. 17) After examining him, ordering several lab tests, recording his symptoms and observing him over a period of four days, Dr. Woodring's final diagnoses included angina pectoris, coronary artery disease and arteriosclerotic heart disease with atrial fibrillation. Dr. Woodring observed and examined the miner, again, on October 22, 1996, when was readmitted for chest pain. Her observations and diagnoses this second time were the same, with the addition of generalized anxiety disorder.

On October 23, 1996, Dr. Vincente Kaw saw the miner at Dr. Woodring's suggestion, to evaluate his cardiac condition. (Dir. Ex. 17) Based on an examination, EKG and blood tests, this doctor diagnosed chronic atrial fibrillation and coronary artery disease.

The miner died on November 7, 1996 and the county coroner, Dr. Bill Bisceglia, completed the death certificate. (Dir. Ex. 11) This certificate listed as the cause of death "constrictive atherosclerotic coronary artery disease" due to "COPD [chronic obstructive pulmonary disease]." Coal workers' pneumoconiosis was listed as another significant condition contributing to the death.

Dr. N.R. Bathija, a pathologist, performed an autopsy and completed a report on November 12, 1996. (Dir. Ex. 15) His microscopic examination of the respiratory system included the following observations:

The lungs in addition show coal worker's pneumoconiosis, simple, with pleural surrounding the pulmonary vessels, bronchi and alveoli showing deposition of anthracotic pigment along with silica particles and focal fibrosis. There are very occasional nodules. The hilar lymph nodes are enlarged, show deposition of anthracotic pigment.

Dr. Bathija's anatomical diagnosis was as follows: 1) biventricular hypertrophy, heart; 2) coronary atherosclerosis, moderate to severe; 3) pulmonary edema, lungs; 4) congestion, emphysema, lungs; and 5) coal worker's pneumoconiosis, lungs.

In an undated letter, Dr. Bisceglia stated that he did not complete the death certificate until after he had reviewed Dr. Bathija's autopsy report, and that he had considered both Dr. Bathija's medical report and the decedent's coal mining history in forming his conclusions about the cause of the miner's death. (Dir. Ex.. 16)

Dr. Woodring completed a letter on September 29, 1998, in which she stated that she had observed the miner at the Appalachian Regional Hospital in Middlesboro, Kentucky one week prior to his death, and had evaluated him because of chest pain. (Dir. Ex. 16) Dr. Woodring added that she concurred with the findings in Dr. Bathija's autopsy. Dr. Woodring completed yet another letter on May 28, 1999, in which she stated that she agreed with Dr. Bathija's findings on autopsy and, specifically, his finding that the miner suffered from coal worker's pneumoconiosis. (Dir. Ex. 18) She added that this condition was due to the patient's 20 plus years of working in the mines.

On July 23, 1999, Dr. Joshua Perper completed a consulting report at the Department of Labor's request, based on his review of the medical evidence. (Dir. Ex. 19) Considering the patient's records, along with his coal mining history for an "undetermined period of time," Dr. Perper concluded that Mr. McVey had simple coal worker's pneumoconiosis, but believed that the pneumoconiosis was not a "substantial contributory cause" of the miner's death. However, this pathologist stated that pneumoconiosis "might have been a contributory cause of death."

Dr. James R. Castle, also a pulmonary specialist, as well as a "B" reader, reviewed all of Mr. McVey's medical data and completed a consulting report on December 15, 1999. (Er. Ex. 1) This doctor indicated that the miner had worked in the coal mining industry "for a sufficient enough time to have developed coal workers' pneumoconiosis if he were a susceptible host," and concluded that Mr. McVey had "minimal, simple coal worker's pneumoconiosis." This specialist also concluded that the medical reports documented evidence of severe coronary artery disease, which Dr. Castle described as unrelated to the miner's past exposure to coal dust. In Dr. Castle's words, the miner's death "was not caused even in part by pneumoconiosis." Dr. Castle concluded that the miner died as a result of the coronary artery disease and complications thereof and that he would have died at the same time and in the same manner "had he never set foot inside a coal mine."

Dr. Joseph J. Renn, another board-certified pulmonary specialist, completed a consulting report on January 7, 2000, based on his review of all medical evidence of record. (Er. Ex. 2) Considering this evidence and a coal mining history of 14 years, Dr. Renn found that the miner had simple coal worker's pneumoconiosis, but also found that the miner "did not 'suffer' from the same." Dr. Renn opined that Mr. McVey had no ventilatory impairment whatsoever owing to any respiratory disease process, including pneumoconiosis. Dr. Renn stated that, with a reasonable degree of medical certainty, the miner's demise "was neither caused, nor contributed to, by the mild simple coalworkers' pneumoconiosis that was discovered at autopsy."

Dr. Miles J. Jones, who is board-certified in clinical and anatomical pathology, as well as forensic pathology, also reviewed all medical data of record and completed a consulting report on February 23, 2001. (Cl. Ex. 1) This specialist found that the miner "clearly suffered from coal workers' pneumoconiosis." He also found that the pneumoconiosis was of a "sufficient severity to have caused cor pulmonale (biventricular hypertrophy) and thus, significantly weakened his heart and led directly to his death." It was Dr. Miles' belief that the combination of chronic obstructive pulmonary disease and emphysema worsened the coal workers' pneumoconiosis and hastened the miner's death. In summary, Dr. Miles found that if the patient had not suffered from black lung

disease he would have had a better chance to tolerate his cardiac arrhythmia and therefore have expected to have had a longer life.

The last consulting report of record is by Dr. Victor Louis Roggli, who completed his opinion on May 10, 2001. (Er. Ex. 3)¹¹ Dr. Roggli concluded, after a review of all medical evidence, that the histologic findings are consistent with simple coal worker's pneumoconiosis. However, Dr. Roggli believed that it was "unlikely" Mr. McVey was totally disabled due to the disease or that the pneumoconiosis was a contributing factor to his death.

DISCUSSION

Applicable Law:

Because the survivor's claim was filed after March 31, 1980, the effective date of Part 718, it must be adjudicated under those regulations. Section 718.205 provides that benefits are available to eligible survivors of a miner whose death was due to pneumoconiosis. An eligible survivor will be entitled to benefits if any of the following criteria are met:

1. Where competent medical evidence establishes that the miner's death was due to pneumoconiosis;
2. Where pneumoconiosis was a substantially contributing factor, or cause, leading to the miner's death, or where death was caused by complications of pneumoconiosis; or
3. Where the presumption set forth in § 718.304 (evidence of complicated pneumoconiosis) is applicable.

Section 718.205(c).

The permanent Department of Labor regulations at Part 718 have significantly stiffened the criteria for entitlement to survivors' benefits. Specifically, these regulations provide that a survivor is entitled to benefits only where the miner died due to pneumoconiosis (unless § 718.306 is applicable). §§ 725.212(a)(3), 725.218(a)(2), 725.222(a)(5), and 718.205(a). As a result, the survivor of a miner who was totally disabled due to pneumoconiosis at the time of death, but died due to an unrelated cause, is not entitled to benefits. § 718.205(c). In addition, a survivor is not entitled to the use of lay evidence, or the presumptions at §§ 718.303 and 718.305 to aid in establishing entitlement to survivors' benefits.

These provisions narrow eligibility for survivor's benefits to those cases where the miner's death is due to pneumoconiosis. § 718.205(a). It is noteworthy that, in *Trumbo v. Reading*

¹¹ This medical report was submitted by the Employer post-hearing, in accordance with the instructions at the hearing. (Tr. 9, 24)

Anthracite Co., 17 B.L.R. 1-85 (1993), the Board held that in a Part 718 survivor's claim, the

Judge must make a threshold determination as to the existence of pneumoconiosis under § 718.202(a) prior to considering whether the miner's death was due to disease under § 718.205.

Claimant has the burden of proving the existence of pneumoconiosis, as well as every element of entitlement, by a preponderance of the evidence. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). Section 718.202(a) sets forth four methods for determining the existence of pneumoconiosis. Under § 718.202(a)(1), a finding that pneumoconiosis exists may be based upon x-ray evidence. Only two of the sixteen x-ray interpretations are positive for black lung. I find that the numerous readings of no pneumoconiosis by several "B" readers and Board-certified radiologists substantially outweigh the positive readings by Dr. Baker and Dr. Thorley. The United States Court of Appeals for the Sixth Circuit, under whose appellate jurisdiction this case arises,¹² confirmed that consideration of the numerical superiority of the x-ray interpretations, when examined in conjunction with the readers' qualifications, is the proper method for weighing evidence. *Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55 (6th Cir. 1995) (citing *Woodward v. Director, OWCP*, 991 F.2d 314 (6th Cir. 1993)). In the instant case, a greater number of "B" readers and Board-certified radiologists read the x-ray films as negative. Therefore, I find this evidence weighs against the existence of pneumoconiosis.

A biopsy or autopsy conducted and reported in compliance with § 718.106 may also be the basis for finding the existence of pneumoconiosis. 20 C.F.R. § 718.202(a)(2). Dr. Bisceglia, who performed the autopsy, found the existence of coal workers' pneumoconiosis. All of the reviewing pathologists and pulmonary specialists agreed with this finding, based on their review of the autopsy slides, Dr. Bisceglia's report, and the other medical data in the record. Therefore, I find the weight of the autopsy evidence and the opinions by physicians who reviewed that evidence establishes the existence of pneumoconiosis under § 718.202(a)(2).

Because Claimant established that her husband worked for over ten years in qualifying coal mine employment, she is entitled to a rebuttable presumption that his pneumoconiosis arose from that employment. *See* 20 C.F.R. § 718.203(b). This presumption may be rebutted by evidence demonstrating another cause for a miner's pneumoconiosis. The employer has proffered no evidence to show another cause for the miner's pneumoconiosis in this case. Accordingly, I find that Mr. McVey's pneumoconiosis arose from coal mine employment.

Death Due to Pneumoconiosis:

Claimant must also show that the miner's death was caused by pneumoconiosis, to be entitled to benefits. Although the Benefits Review Board requires that death must be "significantly" related to or aggravated by pneumoconiosis, the circuit courts have developed the "hastening death" standard which requires establishment of a lesser causal nexus between pneumoconiosis and the miner's death. The

¹² The Benefits Review Board has held that the law of the circuit in which the miner's last coal mine employment occurred is controlling. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989). The miner's last coal mine employment took place in Kentucky, which falls under the Sixth Circuit's jurisdiction.

Sixth Circuit reaffirmed its holding in *Brown v. Rock Creek Mining Corp.*, 996 F.2d 812 (6th Cir. 1993) (J. Batchelder dissenting), to state that benefits are awarded to a survivor who establishes that “pneumoconiosis is a substantially contributing cause or factor leading to the miner’s death if it serves to hasten that death in any way.” *Griffith v. Director, OWCP*, 49 F.3d 184 (6th Cir. 1995) (emphasis added). In order to recover benefits, Claimant must prove that pneumoconiosis hastened her husband’s death in some manner.

Not all of the physicians, including the doctor who performed the autopsy, addressed the issue of whether pneumoconiosis contributed to the miner’s death. Of the physicians who provided an opinion on this issue, Dr. Jones was the only physician to state, unequivocally, that pneumoconiosis was a contributing factor. Dr. Perper believed that pneumoconiosis “might have been a contributory cause,” but this opinion is equivocal and not supportive of a finding that pneumoconiosis hastened the death as required under the regulations. *Griffith*, 49 F.3d 184; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Similarly, Dr. Roggli’s opinion is equivocal, in that he opined that it was “unlikely” that pneumoconiosis was a contributing factor to the miner’s death. Thus, the opinions of Drs. Perper and Roggli are entitled to less probative weight surrounding this particular issue of causation.

The remaining two physicians who commented on this issue, Drs. Renn and Castle, found that pneumoconiosis played no part in causing the miner’s death. Both of these specialists reasoned that, even though simple pneumoconiosis was present, it was of such a mild degree that it could not have contributed to Mr. McVey’s death which was due to his coronary artery disease and related heart problems. I assign great probative weight to the opinions of Drs. Castle and Renn, as these doctors are board-certified in pulmonary disease. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Burns v. Director, OWCP*, 14 BLR 1-2 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985). Moreover, the reports from these specialists deserve significant probative weight as reasoned medical opinions. See *McClendon v. Drummond Coal Co.*, 12 BLR 2-108 (11th Cir. 1988).

In sum, I find that the opinions of Drs. Castle and Renn, that pneumoconiosis did not contribute to the miner’s death, outweigh the other medical opinions of record which state or imply that black lung was a contributing factor. Thus, the evidence does not establish the final element of entitlement pursuant to § 718.205(c).

Entitlement:

As Claimant has failed to establish that the miner’s death was due to pneumoconiosis, I find that she is not entitled to benefits under the Act.

Attorney’s Fees:

The award of an attorney’s fee under the Act is permitted only in cases in which a claimant is found to be entitled to the receipt of benefits. Because benefits are not awarded in this case, the Act prohibits the charging of any attorney’s fee to Claimant for legal services rendered in pursuit of benefits.

ORDER

It is therefore ORDERED that the claim of Anna Mae McVey, widow of Richard McVey, under the Act is DENIED.

A
THOMAS F. PHALEN, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 days from the date of this decision, by filing notice of appeal with the Benefits Review Board, P.O. Box 37601, Washington, D.C. 20013-7601. A copy of a notice of appeal must also be served on Donald S. Shire, Esquire, Associate Solicitor for Black Lung Benefits, Frances Perkins Building, Room N-2605, 200 Constitution Avenue, NW, Washington, D.C. 20210.